

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 194 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA

HON'BLE MS.JUSTICE H.N.DEVANI

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- 1 Whether Reporters of Local Papers may
be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the
fair copy of the judgment ?
- Whether this case involves a
substantial question of law as to the
4 interpretation of the constitution of
India, 1950 or any order made
thereunder ?
- 5 Whether it is to be circulated to the
civil judge ?

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COMMISSIONER OF INCOME-TAX - Applicant(s)

Versus

NARESH RATILAL SHAH - Respondent(s)

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Appearance :

MR MANISH R BHATT for Petitioner No(s).: 1.
DS AFF.NOT FILED (N) for Respondent No(s).: 1.

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CORAM :HON'BLE MR.JUSTICE D.A.MEHTA

**AND
HON'BLE MS.JUSTICE H.N.DEVANI**

Date : 13/07/2005

ORAL JUDGMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1 The following question is referred under Section 256(1) of the Income Tax Act,1961 (the Act) by Income Tax Appellate Tribunal, Ahmedabad Bench 'A' at the instance of the Commissioner of Income Tax.

“Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that provisions of Section 54 of the I.T.Act,1961 were applicable to an assessee who was a Hindu Undivided Family ?”

2 Heard Mr.M.R.Bhatt, learned Standing Counsel for the applicant-revenue. Though served, there is no appearance on behalf of the respondent-assessee.

3 The Assessment Year is 1981-82 and the accounting period is the year ended 31.3.1981. The assessee, an HUF claimed exemption from

tax on capital gains on sale of residential property and subsequent purchase from the sale consideration under Section 54 of the Act. The Assessing Officer held that as the assessee was an HUF it was not entitled to relief under Section 54 of the Act.

4 The assessee's challenge against the said order failed before the Appellate Assistant Commissioner. However, the Tribunal held in favour of the assessee allowing the appeal filed by the assessee vide its order dated 19.7.1990.

5 The issue raised is no longer res-integra. This Court in the case of *Ravindra Gunvantlal Shah Vs. Commissioner of Income Tax*, (1994) 208 ITR 995 held that a Hindu undivided family under the Income-tax Act, 1961, is a separate entity and has its own existence apart from its members. Therefore, for the

purpose of section 54 of the Act, a Hindu undivided family cannot be equated with the members of the Hindu undivided family. Therefore, an assessee which is an HUF is not entitled to the benefit of Section 54 in respect of the investment made by it in the purchases of residential property out of the sale proceeds of residential property belonging to it.

6 Applying the aforesaid ratio to the facts of the case it is apparent that the Tribunal was in error in holding that Section 54 was applicable in the case of an HUF . Accordingly, the question referred for the opinion of this Court is answered in the Negative i.e., in favour of the revenue and against the assessee

7 The Reference stands disposed of accordingly. There shall be no order as to costs.

(D.A.Mehta, J)

(H.N.Devani, J)

m.m.bhatt